IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Richard G. Ketchum et al. Art Unit : 3624
Serial No. : 09/401,872 Examiner : Narayanswamy Subramanian
Filed : September 23, 1999
Title : MONTAGE FOR AUTOMATED MARKET SYSTEM

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Applicant responds to the Examiner's Answer and the new ground of rejection as follows:

The examiner removed the rejection of claims 1, 4-6, 10, 16-17, and 24 as being anticipated by Korhammer et al under 35 U.S.C. 102(e).

Grounds of Rejection

1. On page 3, the examiner provides a New Ground of rejection. The examiner rejects claims 1, 3-10, 14-21 and 24, as being obvious Korhammer et al. in view of Gutterman et al.

2. The examiner also rejects claims 12, 13, 22, and 23 under 35 U.S.C. 103(a), as being obvious over Korhammer et al. in view of Gutterman et al. in view of Martyn et al. U.S. Patent No. 6, 195,647 (Martyn).

**(1) Claims 1, 3-10, 14-21 and 24 are patentable
over Korhammer et al. in view of Gutterman et
al.**

<u>Claim 1</u>

Appellant's claim 1 is directed to an electronic market system for trading of securities. Appellant's claimed electronic market system includes a plurality of client stations for entering quotes and a server process that receives quotes from the client stations and aggregates the quotes. The server process of claim 1 also causes a total of all aggregated quotes to be displayed for each of a plurality of price levels on the client systems. Claim 1 further causes a current quote window to be displayed on the client systems in proximity to the aggregated quotes. Korhammer taken separately or in combination with Gutterman neither describes nor suggests claim 1.

The examiner contends that Korhammer teaches "... a server process that receives quotes from the clients ... aggregates the quotes and causes the aggregated quotes to be displayed for a plurality of price levels." The examiner argues that: "totaling the quotes for each price level is inherent in the system and hence not explicitly illustrated in the reference." (Answer Page 4; Office action dated May 9, 2003).

FIGS. 4 and 5 of Korhammer depict market data screens. Korhammer neither describes nor suggests a process that "aggregates the quotes" and causes a "total of all aggregated quotes to be displayed for each of a plurality of price levels" as in the applicant's claim 1. There is not a single teaching in Korhammer that the examiner has pointed to that shows that totaling quotes for each price level is inherent in Korhammer.

Any discussion of inherency has no place in a consideration of obviousness. The concept of inherency is not applicable to the question of obviousness. *In re Sporman*, 363 F.2d 444, 150 USPQ 449 (CCPA 1965). To refer to an unexpected property or parameter as inherent begs the question of whether the unexpected property rebuts prima facie obviousness.

Obviousness and inherency are entirely different questions; that which may be inherent is not necessarily known and, therefore, is an indication of unobviousness (*In re Sporman*, 363 F.2d 444, 449, 150 USPQ 449, 452 (CCPA 1965; see, also *In re Naylor*, 360 F.2d 765, 152 USPQ 106

(CCPA 1966); *In re Adams*, 356 F.2d 998, 148 USPQ 742 (CCPA 1966); and *In re Shetty*, 566 F.2d 81, 195 USPQ 753 (CCPA 1977)).

Moreover, the examiner's characterization of claim 1 as requiring merely a totaling of quotes is erroneous. Rather, claim 1 covers a system that causes a total of all aggregated quotes to be displayed for each of a plurality of price levels on the client systems. Korhammer can be used only for what it fairly suggests to a person of ordinary skill in the art. The examiner is not free to argue that Korhammer inherently total quotes. The examiner must show that one of ordinary skill in the art would be motivated to modify Korhammer to provide this feature. The examiner has failed to satisfy this burden. Korhammer with Gutterman fail to suggest a system that displays totals of all aggregated quotes for each of a plurality of price levels on the client systems. Rather, Korhammer teaches and discusses the opposite and does not suggest this feature of the invention, and Gutterman does not cure this deficiency.

The examiner contends (Examiner's Answer page 4 and Final Action page 4, lines 2-5) that Korhammer's "desired attributes" (Col. 4, line 36) is interpreted to include the total of all aggregated quotes and that totaling the quotes for each price level is inherent in the system and hence not explicitly illustrated in the reference. The examiner is incorrect for several reasons. For instance, Korhammer does not describe the aggregation of quotes for each price level nor is an aggregated value for each price level shown in any of the figures (e.g., FIGS. 4 and 5 related to the market data screens). Rather, the aggregation to which the examiner refers (Col. 4, lines 19-26) is an aggregation of information from various computer systems (i.e., collecting quotes from multiple ECNs) and displaying of each of the quotes. Korhammer does not suggest producing a "total of all aggregated quotes to be displayed for each of a plurality of price levels" as in the applicant's claim 1. Based at least on these differences, Korhammer does not suggest these features of claim 1.

The examiner has failed to give plain meanings to words used in Appellant's claim, specification and the prior art. The plain meaning of the limitation "total of all aggregated quotes to be displayed for each of a plurality of price levels" is not met by a reference that only teaches to display individual quotes.

Appellant's claim 1 further recites a current quote window ... displayed on the client systems in proximity to the aggregated quotes. The examiner concedes that Korhammer does not explicitly teach this. The examiner combines Korhammer with Gutterman to teach this feature of Claim 1.

The examiner argued in the Answer that: " ... The market pane is interpreted to include current quotes and the deck pane includes the aggregate quotes for each price level (See Gutterman Col. 11 lines 57-68 and Col. 12 lines 44-51)." The examiner combines these teachings stating: "The combination of the disclosures taken as a whole suggests that customers would have benefited from having a better feel for the market by having the current quote window in proximity to the aggregate window."

Gutterman, like Korhammer does not teach a system in which aggregated quotes are "displayed for each of a plurality of price levels on the client systems," as in Appellant's claim 1.

According to Gutterman, (Col. 10, lines 39-47) Gutterman displays the total number of contracts at that price for incoming orders. There is no suggestion to combine these teachings since there has not been a showing that Korhammer would appreciate the benefit of aggregated quotes.

In addition, the total column in the incoming orders pane in Gutterman displays in the order line a total number of contracts at a price for all incoming orders based on the time of arrival. Thus, Gutterman's total is displayed only for the orders (and price levels of the orders) displayed on the incoming orders screen and not for the orders in the queue. Gutterman displays the total as a part of the information for a particular order in the order window. Gutterman does not include a current quote window "displayed on the client systems in proximity to the aggregated quotes," as claimed.

Furthermore, Gutterman does not discuss quotes. As shown in FIG. 2b, and as taught by Gutterman, "it is advantageous to show buy orders in blue and sell orders in red and to outline the incoming orders pane in a different color" (Col. 11, lines 41-44). Since, Gutterman does not discuss or suggest the use of quotes and does not address any of the deficiencies of Korhammer, there is no suggestion to combine the order management system of Gutterman with the system of Korhammer.

Claims 3, 5, 6, and 9

Appellant's claim 3 depends on claim 1 and further distinguishes the system of claim 1 by specifying that the aggregated quotes at the plurality of price levels are rendered in an aggregate window of a graphical user interface displayed on the client systems. Accordingly, Korhammer and Gutterman do not form a basis for an obviousness rejection under 35 U.S.C. 103(a) of claim 1 or the other claims of this group. Claims 5, 6, and 9 are allowable at least for the reasons discussed in claim 1.

Claim 4

Appellant's claim 4 depends on claim 1 and further limits claim 1. Claim 4 recites that the plurality of price levels are dynamically changeable depending on market conditions. Korhammer does not suggest this feature. The examiner considers these features to be taught at col. 8, lines 61-68 of Korhammer.

However, in the text relied on by the examiner, Korhammer describes sorting what Korhammer characterizes as bids and offers by price and displaying the volume 265, four-character identification 266, and price 267. As seen in FIGS. 4 and 5, multiple bids and offers are displayed for each price level and the number and range of price levels is determined based on the bids received. Korhammer does not include a plurality of price levels that dynamically change based on market conditions. Instead, the price levels displayed by Korhammer are based only on the number of bids and offers received and the size of the display. For example, the display shown in FIG. 4 includes 22 entries for the bid side of the market and 22 entries for the offer side. The bid entries are at 6 price levels whereas the ask side entries are at 4 price levels or a total of forty-four entries at ten price levels for both sides of the market.

On the other hand, the display shown in FIG. 5 includes 22 entries for the bid side of the market and 22 entries for the ask side. The bid entries are at 8 price levels whereas the ask side is at 4 price levels for a total of forty-four entries at twelve price levels over both sides of the market. This difference in the number of price levels shows that the Korhammer's displayed price levels are based on the only on the number of bids and offers received and are not based on the market conditions.

Furthermore, if 22 quotes were received at the best bid price level, only one bid price level (i.e., the best price level) would be displayed in Korhammer while other quotes at different price levels would be hidden from the market. Similarly, if 22 ask bids were received at the best ask price only one ask price level would be displayed while other quotes at different price levels would be hidden from the market. Thus, the price levels displayed are determined by the number of received quotes at a price level. The number of price levels in Appellant's claim 4 is fixed at a plurality of levels and the prices at the plurality of levels "dynamically change depending on market conditions." Thus, Korhammer does not anticipate claim 4 because the number of quotes received at any particular price level as taught by Korhammer does not reflect a plurality of price levels that are dynamically changeable depending on market conditions, as recited in the appellant's claim 4.

Although the examiner does not rely on Gutterman in the rejection of claim 4, Gutterman also does not describe or suggest a system in which the plurality of price levels are dynamically changeable depending on market conditions. Gutterman includes a total column in the incoming orders pane (see FIG. 2A), however, this pane displays orders according to the time the orders are received. Thus, the displayed totals are determined not by the current market conditions but instead by the orders with the earliest timestamp that are displayed on the incoming orders pane. If the market conditions were to change, the totals would be displayed only after the orders received in the queue prior to the change had been cleared from the incoming orders pane. Thus, whether taken alone or in combination with Gutterman, Korhammer does not make obvious the features of claim 4.

Claim 7

Claim 7 calls for an identifier that represents the aggregate size of all non-attributable quotes/orders at the best bid/best offer displayed in the current quote montage. Neither Korhammer nor Gutterman whether taken separately or in combination describe or suggest this feature.

In the examiner's Answer, the examiner discusses panes for order management and equates panes to windows. Nowhere in the examiner's Answer does the examiner address the

feature of "an identifier that represents the aggregate size of all non-attributable quotes/orders at the best bid/best offer displayed in the current quote montage" as recited in claim 7.

In the office action dated October 2, 2003, the examiner recites: "Korhammer fails to explicitly teach… the current quote window including an identifier of aggregate size of all non-attributable quotes/orders at the inside price… ." The examiner relied on Gutterman to provide this feature, but did not provide a reference to where Gutterman teaches this feature and states that:

> [t]he combined disclosure also suggests that by having the
> information about the aggregate size of the non-attributable
> quotes/orders at the inside market quote and information about the
> aggregated interest immediately at and around the inside market
> quote on the same screen investors have a better feel for the
> immediate demand and supply for a given security…

However, Korhammer neither describes nor suggests an identifier that represents the aggregate size of all non-attributable quotes/orders at the best bid/best offer displayed in the current quote montage.

In response to Appellant's amendment, the examiner stated in the final action that:

> [t]he term "quotes" as used in Korhammer refers to the "genus" of
> which attributable and non-attributable quotes are species. In
> Korhammer's invention, a distinction of the various species of the
> same genus was not necessary and hence particular references to
> these quotes were not made in the invention. However, the terms
> attributable and non-attributable are inherent in the disclosure of
> Korhammer (page 14, lines 5-10 of the final action).

The examiner provides no basis for this comment. The examiner again relies on an inherency argument to cover features that are not disclosed in the references. Inherency however, has no place in a consideration of obviousness. The concept of inherency is not applicable to the question of obviousness. See *In re Sporman* supra.

Korhammer provides no mechanism for use or appreciation of non-attributable quotes. When a quote is displayed, the quote by definition is attributable since Korhammer teaches that

Applicant : Richard G. Ketchum et al.
Serial No. : 09/401,872
Filed : September 23, 1999
Page : 8

Attorney's Docket No. 09857-027001

the displayed quotes are rendered in the window with the market participant identification. Korhammer also fails to suggest that some quotes are not displayable. Thus, Korhammer in combination with Gutterman do not suggest the features of claim 7.

Claim 8

Claim 8 further limits claim 7 and requires that the identifier is displayed for both sides of the market. The identifier feature is not suggested by the combination of references and thus it would not be obvious to display the identifier for both sides of the market.

Claim 10

Appellant's claim 10 recites a graphical user interface that includes "an aggregate window having a first plurality of indicators that displays totals of aggregated interest." Claim 10 is neither described nor suggested by Korhammer in combination with Gutterman. Again, as discussed above, Korhammer does not teach aggregation of quotes for each price level nor is an aggregated value for each price level shown in any of the figures.

Gutterman does not describe or suggest "an aggregate window having a first plurality of indicators that displays totals of aggregated interest...at a third plurality of price levels."

In Gutterman's FIG. 2A, a total is displayed in the incoming orders window for orders in the incoming orders pane sorted by arrival time. Gutterman states "because of the fixed size of the incoming orders pane 120, a touch sensitive scroll bar 122 is generated... the incoming order pane object also generates a queue portion 125... shown in the queue portion is the number of orders (zero is shown in the figure) that have been received by the workstation 10 but that are not displayed in the incoming orders pane 120 because of the pane's fixed size" (Col. 10, lines 46-57). Gutterman displays an order based on time of receipt, and if the number of orders received exceeds the capacity of the window, a user would not see the depth of the market. For example, at a particular time if orders are included in the queue 125 at a better price, a user would not be able to view these orders until orders received prior to these orders are cleared from the incoming orders pane. In addition, Gutterman's order total is displayed with other information on the order line and no suggestion is made to display the total in a separate aggregate window.

Claim 10 also recites a current quote window disposed adjacent the aggregate window. For reasons discussed above, this feature of claim 10 is neither described nor suggested by the combination of Korhammer and Gutterman.

Claim 24

Claim 24 is allowable for analogous reasons as claim 10.

Claim 14

The examiner concedes that Korhammer does not disclose the features of claim 14 and relies upon Gutterman. However, Gutterman likewise does not disclose a system in which three price levels of aggregated interest are displayed, with one being the price levels corresponding to the inside quote and the others being the next best price levels in the system for each side of the market.

Claim 15

Appellant's claim 15 depends on claim 14 and further limits claim 14. Claim 15 recites that the price levels are dynamically changeable depending on market conditions.

Korhammer does not suggest this feature. The examiner considers these features taught at col. 8, lines 61-68 of Korhammer. However, in the text relied on by the examiner, Korhammer describes sorting what Korhammer characterizes as bids and offers by price and displaying the volume 265, four-character identification 266, and price 267. As seen in FIGS. 4 and 5, multiple bids and offers are displayed for each price level and the number and range of price levels is determined based on the number of bids received at a price level. Korhammer does not include a plurality of price levels that are dynamically changeable based on market conditions. Instead, the price levels displayed by Korhammer are based only on the number of bids and offers received at a particular price level.

As argued above for group II (claim 4), in Korhammer the price levels displayed are determined by the number of received quotes. However, this teaching would not lead one of ordinary skill in the art to provide a plurality of price levels that are dynamically changeable depending on market conditions. Similarly, in Gutterman, the displayed totals are determined

not by the current market conditions but instead by a set of orders with the earliest timestamp that are displayed on the incoming orders pane. Thus, whether taken alone or in combination with Gutterman, Korhammer does not make obvious price levels that are "dynamically changeable depending on market conditions" as recited in claim 15.

Claim 16

Appellant's claim 16 includes aggregating non-attributable interest in the product to provide a total of all non-attributable interest at a plurality of price levels.

On page 5 line 4 of the final action, the examiner contends, (referring to Korhammer) "the desired attributes are interpreted to include non-attributable interest in a product and totaling is inherent in the disclosure." Korhammer only describes attributable interest, and does not distinguish between attributable and non-attributable interest. Korhammer does not further suggest to aggregate the non-attributable interest and provide a total of all non-attributable interest. As discussed above, Korhammer does not deal with non-attributable interest in the market. Since Korhammer does not describe non-attributable interest Korhammer is not an anticipating reference for claim 16 under 35 U.S.C. 102(e).

Again, Appellant notes that any discussion of inherency has no basis in an obviousness rejection as discussed above. Further, the examiner has not produced any suggestion as to why one of ordinary skill would conclude that Korhammer suggests to include non-attributable interest.

However, if Korhammer were modified to include non-attributable interest there is no basis to for the examiner to argue that such non-attributable interest would be treated any differently than attributable interest. That is, were Korhammer to be so construed, Korhammer would merely display each non-attributable order as an individual entry in the market data screen without the four character identification as is used for attributable interest. There is not any basis to say that Korhammer would further include "aggregating non-attributable interest in the product to provide a total of all non-attributable interest at a plurality of price levels," as recited in claim 16.

Claim 17

Claim 17 calls for displaying the aggregated non-attributable interest in a window for at least one of the plurality of price levels. On page 7 line 4 of the Answer, the examiner contends (referring to Korhammer): "The desired attributes are interpreted to include non-attributable interest in a product and totaling is inherent in the disclosure." As discussed above, the doctrine of inherency has no basis in an obviousness rejection. Further, Korhammer does not suggest including non-attributable interest or totaling the non-attributable interest.

Moreover, since Korhammer does not deal with non-attributable interest, assuming that Korhammer were modified (without any suggestion offered by the examiner) to provide aggregate values, (which Appellant does not concede), Korhammer would not suggest or teach displaying aggregated non-attributable interest.

Claims 18 and 20

Claims 18 and 20 are allowable for analogous reasons as claim 17.

Claim 19

Appellant's claim 19 recites that the plurality of price levels are dynamically changeable depending on market conditions. Neither Korhammer nor Gutterman suggest this feature, as argued above. The examiner considers these features to be taught (at Col. 8, lines 63-67 and Col. 9, lines 19-26) by Korhammer.

As argued above for group II (claim 4), in Korhammer the price levels displayed are determined by the number of received quotes. However, the number of quotes received at any particular price level would not lead one of ordinary skill in the art to provide a plurality of price levels that are dynamically changeable depending on market conditions. Similarly, in Gutterman, the displayed totals are determined not by the current market conditions but instead by a set of orders with the earliest timestamp that are displayed on the incoming orders pane. Thus, whether taken alone or in combination with Gutterman, Korhammer does not make obvious price levels that are "dynamically changeable depending on market conditions" as recited in claim 19.

Applicant : Richard G. Ketchum et al.
Serial No. : 09/401,872
Filed : September 23, 1999
Page : 12

Attorney's Docket No. 09857-027001

Claim 21

Claim 21 is allowable for analogous reasons as claim 19.

(2) Claims 12, 13, 22, and 23 are patentable over Korhammer et al. in view of Gutterman et al. in view of Martyn et al..

The Examiner rejected claims 12, 13, 22, and 23 under 35 U.S.C. 103(a), as being obvious over Korhammer et al. in view of Gutterman et al. in view of Martyn et al. U.S. Patent No. 6, 195,647 (Martyn).

Claim 12

Claim 12 further limits claim 10 and requires that a current quote window display quotes that may be negotiable quotes of participants in the system. Appellant concedes the feature of "negotiable quotes" is shown by Martyn. However, Martyn does not cure any of the deficiencies of Gutterman and Korhammer. Therefore, claim 12, which depends on claim 10, is distinguished since the references do not suggest a graphical user interface that includes both a current quote window and the aggregate interest window as in Appellant's claim 10.

Claim 13

Appellant's claim 13 further limits the current quote window and recites that the current quote window displays quotes that are attributable quotes of participants in the system and further comprises a special quote that represents total aggregate non-attributable quotes at a current market level included in an indicator in the aggregation window. The special quote that represents total aggregate non-attributable quotes at a current market level included in an indicator in the aggregation window is neither described nor suggested in any of the references.

The examiner on page 15 argues that: "the features upon which applicant relies (i.e., special quote is "SIZE") are not recited in the rejected claim(s)."

In the main brief, Appellant argued that Claim 13 distinguished because of the feature of a special quote that represents total aggregate non-attributable quotes at a current market level. (See page 17, last paragraph and page 18 first paragraph). Appellant mentioned "SIZE" as an

example identifier for the special quote, to assist the examiner in understanding this concept. Appellant did not argue a limitation that was not in the claims, as the examiner incorrectly contends.

Korhammer does not distinguish between attributable and non-attributable interest in the market. Korhammer does not deal with non-attributable quotes and does not make any provision for displaying non-attributable quotes. The examiner relies on an inherency argument that attributable and non-attributable are in Korhammer. The examiner's reliance of an inherency argument in Korhammer is in error, as discussed above. The examiner has also failed to argue why it would be obvious for one of ordinary skill in the art to modify either reference to include non-attributable quotes, as claimed.

Since Korhammer does not suggest non-attributable quotes, it logically follows that Korhammer fails to suggest in the displayed quote montage a special quote that represents the total aggregate of non-attributable quotes. According, the references are void of any teachings to suggest the recited special quote identifier.

Nevertheless, were Korhammer modified to include non-attributable quotes, the only basis for display of non-attributable quotes would be in the same manner as attributable quotes (i.e. separately displaying each of the non-attributable quotes). Korhammer does not provide any basis for a special quote that represents total aggregate non-attributable quotes at a current market level. Gutterman does not cure any of the deficiencies in Korhammer, as argued above.

Claims 22 and 23

Claims 22 and 23 are allowable for analogous reasons as claims 12 and 13.

Comments on the Examiner's Response to Appellant's argument

The examiner asserts on page 13 that:

> ... the step of totaling quotes at each price level and displaying these totals, this step is old and well know in the art. Hence, it is not explicitly illustrated in the references that deal with quotes in a market system. To support this position Applicants are referred to Figure 6 of Buist (US Patent 6,408,282 B1). Buist has not been relied upon for rejecting any of the examined claims.

Appellant contends that if the examiner needs to find a different reference to teach an alleged feature that the examiner cannot find in any of the applied references in the context of an obviousness rejection, then the examiner indeed has relied upon the reference and must show that there is a suggestion to combine that reference with the applied references. The examiner failed to show that there is any motivation to combine Buist with the other references.

Nevertheless, Buist does not help the examiner's position. Buist is at most cumulative to the teachings of Gutterman. Buist in FIG. 6, like Gutterman, displays orders not quotes. Buist describes the displayed information at Col. 12 lines 52-59:

> The three columns to the left of the price column set forth buy side
> orders and the three columns to the right set forth sell side orders.
> The "Limit Qty." and "AON Qty." columns list the size of orders at
> each price level posted into the system by other users. The Your
> orders show columns the user's order in the stock.

Buist does not teach any of the features of the Appellant's claims and does not show that: "the step of totaling quotes at each price level and displaying these totals, this step is old and well know in the art."

Furthermore, the examiner asserts on page 13 that:

> ... the term quotes as used in Korhammer refers to the genus of
> which attributable and non-attributable quotes are species. In
> Korhammer's invention, a distinction of the various species of the
> same genus was not necessary and hence particular references to
> these quotes were not made in the invention. However the terms
> attributable and non-attributable quotes are inherent in the
> disclosure of Korhammer.

This reasoning is erroneous. As noted above, any discussion of inherency has no place in a consideration of obviousness. Inherency is not applicable to the question of obviousness, since it begs the question of what is obvious. That is, obviousness and inherency are entirely different questions; that which may be inherent is not necessarily known and, therefore, is an indication of unobviousness. *In re Sporman*, 363 F.2d 444, 449, 150 USPQ 449, 452 (CCPA 1965; see, also *In*

re Naylor, 360 F.2d 765, 152 USPQ 106 (CCPA 1966); *In re Adams*, 356 F.2d 998, 148 USPQ 742 (CCPA 1966); and *In re Shetty*, 566 F.2d 81, 195 USPQ 753 (CCPA 1977)).

The examiner also dismisses the distinctions between quotes and orders. Quotes and orders are clearly delineated in the Appellant's specification and in the prior art and are understood by those skilled in the art to be different. The examiner has offered no extrinsic basis to deny this distinction, other than a personal belief that is contrary to the generally accepted meanings of these terms in the art. The examiner's example is also incorrect. An order to buy a share of ABC for $100 does not represent a quote to a seller, as the examiner contends. Rather, the order to buy a share is paired against an "sell order" for ABC for $100 or can be matched against an "ask quote" of a quoting market participant.

The examiner points out that the term "predetermined number" of price levels is not recited in claims 4 and 15, Appellant has addressed this above. Nevertheless, whether the phase is "predetermined number of price levels that are dynamically changeable depending on market conditions" or "the plurality of price levels are dynamically changeable depending on market conditions," as is actually recited in claim 4, Korhammer does not suggest either.

The examiner points out that the term "SIZE" is not recited in claims 13. Appellant's argument in claim 13 was not predicated on the existence or non-existence of the feature "SIZE." Rather, Appellant merely pointed out "SIZE" as an example of the special identifier, which is the feature argued in claim 13.

For these reasons, and the reasons stated in the Appeal Brief, Appellant submits that the final rejection should be reversed.
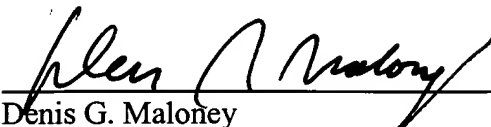
Applicant : Richard G. Ketchum et al.
Serial No. : 09/401,872
Filed : September 23, 1999
Page : 16

Attorney's Docket No. 09857-027001

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 3/11/0Y

Denis G. Maloney
Reg. No. 29,670

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21025549.doc